

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

BIRNBAUM, RICHARD JAY
19510 Ventura Blvd., Suite 210
Tarzana, CA 91355
California Public Accountant License
No. 38463

Case No. D1-2008-21

OAH No. 2012040736

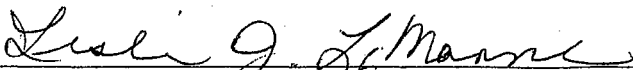
Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy of the Department of Consumer Affairs, as its Decision in the above-entitled matter.

This Decision shall become effective on June 29, 2013

It is so ORDERED on May 30, 2013.



For The CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 HELENE E. SWANSON
Deputy Attorney General
4 State Bar No. 130426
300 So. Spring Street, Suite 1702
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Attorneys for Complainant

7
8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation and Petition to
11 Revoke Probation Against:

12 **RICHARD JAY BIRNBAUM**
13 **19510 Ventura Blvd., Suite 210**
Tarzana, CA 91355

14 **Certified Public Accountant Certificate No.**
15 **38463**

16 Respondent.

Case No. D1-2008-21

OAH No. 2012040736

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 PARTIES

21 1. Patti Bowers (Complainant) is the Executive Officer of the California Board of
22 Accountancy. She brought this action solely in her official capacity and is represented in this
23 matter by Kamala D. Harris, Attorney General of the State of California, by Helene E. Swanson,
24 Deputy Attorney General.

25 2. Respondent Richard Jay Birnbaum (Respondent) is represented in this proceeding by
26 attorney Brandon Fernald, whose address is:

27 //

1 Brandon Fernald
2 Attorney at Law
3 Fernald Law Group, LLP
4 510 West 6th Street, Suite 700
5 Los Angeles, CA 90014

6 3. On or about September 23, 1983, the California Board of Accountancy issued
7 Certified Public Accountant Certificate No. 38463 to Richard Jay Birnbaum (Respondent). The
8 Certified Public Accountant Certificate was in full force and effect at all times relevant to the
9 charges brought in Accusation and Petition to Revoke Probation No. D1-2008-21 and will expire
10 on September 30, 2014, unless renewed.

11 JURISDICTION

12 4. Accusation and Petition to Revoke Probation No. D1-2008-21 was filed before the
13 California Board of Accountancy (CBA), Department of Consumer Affairs, and is currently
14 pending against Respondent. The Accusation/Petition to Revoke Probation and all other
15 statutorily required documents were properly served on Respondent on February 22, 2012.
16 Respondent timely filed his Notice of Defense contesting the Accusation/Petition to Revoke
17 Probation.

18 5. A copy of Accusation/Petition to Revoke Probation No. D1-2008-21 is attached as
19 Exhibit A and incorporated herein by reference.

20 ADVISEMENT AND WAIVERS

21 6. Respondent has carefully read, fully discussed with counsel, and understands the
22 charges and allegations in Accusation and Petition to Revoke Probation No. D1-2008-21.
23 Respondent has also carefully read, fully discussed with counsel, and understands the effects of
24 this Stipulated Settlement and Disciplinary Order.

25 7. Respondent is fully aware of his legal rights in this matter, including the right to a
26 hearing on the charges and allegations in the Accusation and Petition to Revoke Probation; the
27 right to be represented by counsel at his own expense; the right to confront and cross-examine the
28 witnesses against him; the right to present evidence and to testify on his own behalf; the right to
the issuance of subpoenas to compel the attendance of witnesses and the production of

1 documents; the right to reconsideration and court review of an adverse decision; and all other
2 rights accorded by the California Administrative Procedure Act and other applicable laws.

3 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
4 every right set forth above.

5 CULPABILITY

6 9. Respondent does not admit the charges and allegations in Accusation/Petition to
7 Revoke Probation No. D1-2008-21, but understands and agrees, that if proven at hearing, the
8 charges and allegations in Accusation/Petition to Revoke Probation No. D1-2008-21 would
9 constitute cause for imposing discipline upon his Certified Public Accountant Certificate.

10 10. For the purpose of resolving the Accusation without the expense and uncertainty of
11 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
12 basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest
13 those charges.

14 11. Respondent agrees that his Certified Public Accountant Certificate is subject to
15 discipline and he agrees to be bound by the CBA's imposition of discipline as set forth in the
16 Disciplinary Order below.

17 CONTINGENCY

18 12. This stipulation shall be subject to approval by the California Board of Accountancy.
19 Respondent understands and agrees that counsel for Complainant and the staff of the California
20 Board of Accountancy may communicate directly with the CBA regarding this stipulation and
21 settlement, without notice to or participation by Respondent or his counsel. By signing the
22 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
23 to rescind the stipulation prior to the time the CBA considers and acts upon it. If the CBA fails to
24 adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order
25 shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action
26 between the parties, and the CBA shall not be disqualified from further action by having
27 considered this matter.
28

13. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the CBA may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Certified Public Accountant Certificate No. 38463 issued to Respondent Richard Jay Birnbaum (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for six (6) years, on the following terms and conditions:

1. **Restricted Practice.** Certified Public Accountant Certificate No. 38463 issued to Respondent is restricted for five (5) years, commencing on the effective date of the decision. During the period of restriction, Respondent shall engage in no activities for which certification as a Certified Public Accountant or Public Accountant is required as described in Business & Professions Code, Division 3, Chapter 1, Section 5051. Further, Respondent agrees not to engage in preparing tax returns as a Certified Public Accountant, a Registered Tax Preparer, or otherwise. Respondent may prepare his own personal tax returns during the period of probation.

2. **Obey All Laws.** Respondent shall obey all federal, California, other states' and local laws, including those rules relating to the practice of public accountancy in California.

3. **Cost Reimbursement.** Respondent shall reimburse the Board \$20,000.00 for its investigation and prosecution costs. The payment shall be made as follows: in monthly payments

1 for 60 months; the final payment being due one year before probation is scheduled to terminate.

2 4. **Submit Written Reports.** Respondent shall submit, within ten (10) days of
3 completion of the quarter, written reports to the Board on a form obtained from the Board. The
4 Respondent shall submit, under penalty of perjury, such other written reports, declarations, and
5 verification of actions as are required. These declarations shall contain statements relative to
6 Respondent's compliance with all the terms and conditions of probation. Respondent shall
7 immediately execute all release of information forms as may be required by the Board or its
8 representatives.

9 5. **Personal Appearances.** Respondent shall, during the period of probation, appear in
10 person at interviews/meetings as directed by the Board or its designated representatives, provided
11 such notification is accomplished in a timely manner.

12 6. **Comply With Probation.** Respondent shall fully comply with the terms and
13 conditions of the probation imposed by the Board and shall cooperate fully with representatives
14 of the Board in its monitoring and investigation of the Respondent's compliance with probation
15 terms and conditions.

16 7. **Practice Investigation.** Respondent shall be subject to, and shall permit, practice
17 investigation of the Respondent's professional practice. Such a practice investigation shall be
18 conducted by representatives of the Board, provided notification of such review is accomplished
19 in a timely manner.

20 8. **Comply With Citations.** Respondent shall comply with all final orders resulting
21 from citations issued by the Board of Accountancy.

22 9. **Tolling of Probation For Out-of-State Residence/Practice.** In the event
23 Respondent should leave California to reside or practice outside this state, Respondent must
24 notify the Board in writing of the dates of departure and return. Periods of non-California
25 residency or practice outside the state shall not apply to reduction of the probationary period, or
26 of any suspension. No obligation imposed herein, including requirements to file written reports,
27 reimburse the Board costs, or make restitution to consumers, shall be suspended or otherwise
28 affected by such periods of out-of-state residency or practice except at the written direction of the

1 Board.

2 10. **Violation of Probation.** If Respondent violates probation in any respect, the Board,
3 after giving Respondent notice and an opportunity to be heard, may revoke probation and carry
4 out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is
5 filed against Respondent during probation, the Board shall have continuing jurisdiction until the
6 matter is final, and the period of probation shall be extended until the matter is final.

7 11. **Completion of Probation.** Upon successful completion of probation, Respondent's
8 license will be fully restored.

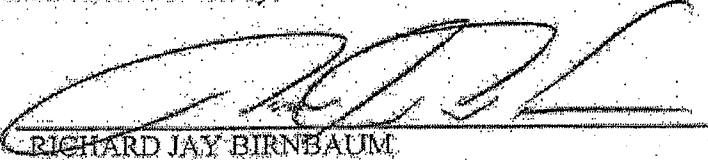
9 12. **Active License Status.** Respondent shall at all times maintain an active license status
10 with the CBA, including during the period of probation. If the license is expired at the time the
11 CBA's decision becomes effective, the license must be renewed within 30 days of the effective
12 date of the decision.

13 13. **Cannot Apply For a Retired License Status.** Respondent understands and agrees
14 that he cannot apply to the CBA for a retired license status during the period of probation.

15 ACCEPTANCE

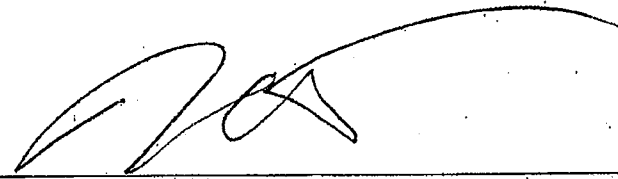
16 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
17 discussed it with my attorney, Brandon Fernald. I understand the stipulation and the effect it will
18 have on my Certified Public Accountant Certificate. I enter into this Stipulated Settlement and
19 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
20 Decision and Order of the California Board of Accountancy.

21
22 DATED: 5/2/2013


23 RICHARD JAY BIRNBAUM
24 Respondent
25
26
27
28

1 I have read and fully discussed with Respondent Richard Jay Birnbaum the terms and
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
3 I approve its form and content.

4
5 DATED: 5/3/2013


Brandon Fernald
Attorney for Respondent Richard Birnbaum

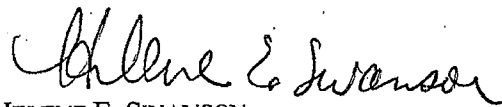
7 ENDORSEMENT

8 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
9 submitted for consideration by the California Board of Accountancy of the Department of
10 Consumer Affairs.

11 Dated: 5/6/13, 2013

Respectfully submitted,

12
13 KAMALA D. HARRIS
Attorney General of California
14 GREGORY J. SALUTE
Supervising Deputy Attorney General

15 
16 HELENE E. SWANSON
17 Deputy Attorney General
Attorneys for Complainant

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19
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Exhibit A

Accusation/Petition to Revoke Probation No. D1-2008-21

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 HELENE E. SWANSON
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8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation/Petition to
11 Revoke Probation Against:

Case No. D1-2008-21

12 **RICHARD JAY BIRNBAUM**
19510 Ventura Blvd., Suite 201
13 Tarzana, CA 91355

A C C U S A T I O N A N D P E T I T I O N T O
REVOKE PROBATION

14 **Certified Public Accountant Certificate No.**
15 **38463**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
21 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

22 2. On or about September 23, 1983, the California Board of Accountancy issued
23 Certified Public Accountant Certificate Number 38463 to Richard Jay Birnbaum (Respondent).
24 The Certified Public Accountant Certificate was in full force and effect at all times relevant to the
25 charges brought herein and will expire on September 30, 2012, unless renewed.

26 3. In a disciplinary action entitled *In the Matter of Accusation Against Richard Jay*
27 *Birnbaum*, Case No. AC-2008-21, the California Board of Accountancy issued a decision
28 effective February 23, 2009, in which Respondent's Certified Public Accountant License was

1 revoked. However, the revocation was stayed and Respondent's Certified Public Accountant
2 License was placed on probation for a period of three (3) years with certain terms and conditions.
3 A copy of that decision is attached as Exhibit A and incorporated by reference.

4 JURISDICTION

5 4. This Accusation and Petition to Revoke Probation is brought before the California
6 Board of Accountancy under the authority of the following laws. All section references are to the
7 Business and Professions Code unless otherwise indicated.

8 5. Section 5109 provides that the expiration, cancellation, forfeiture, or suspension of a
9 license, practice of privilege or other authority to practice public accountancy by operation of law
10 shall not deprive the Board of jurisdiction to commence or proceed with any investigation of or
11 action or disciplinary proceeding against the licensee, or to render a decision suspending or
12 revoking the license.

13 STATUTORY PROVISIONS

14 6. Section 5100 states:

15 "After notice and hearing the board may revoke, suspend, or refuse to renew any permit or
16 certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing
17 with Section 5080), or may censure the holder of that permit or certificate for unprofessional
18 conduct that includes, but is not limited to, one or any combination of the following causes:

19

20 "(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the same
21 or different engagements, for the same or different clients, or any combination of engagements or
22 clients, each resulting in a violation of applicable professional standards that indicate a lack of
23 competency in the practice of public accountancy or in the performance of the bookkeeping
24 operations described in Section 5052.

25

26 "(g) Willful violation of this chapter or any rule or regulation promulgated by the board
27 under the authority granted under this chapter.

28

1 **COST RECOVERY**

2 7. Section 5107(a) of the Code states:

3 "The executive officer of the board may request the administrative law judge, as part of the
4 proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate
5 found to have committed a violation or violations of this chapter to pay to the board all reasonable
6 costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees.
7 The board shall not recover costs incurred at the administrative hearing."

8 **ACCUSATION**

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Gross Negligence and/or Repeated Negligent Acts)**

11 8. Respondent is subject to disciplinary action under Section 5100, subdivision (c), in
12 that Respondent committed gross negligence or repeated acts of negligence, in the preparation of
13 tax returns and partnership documents for the period between 2008 and 2010. Said documents
14 evidenced extreme departures from professional standards and regulatory requirements or
15 repeated acts of negligence. The specific acts and standards of practice that were violated, that
16 collectively constitute gross negligence or repeated negligent acts, are as follows:

17 **2008 Tax Return for Client DF**

18 9. On or about March 31, 2009, Respondent prepared a 2008 individual income tax
19 return for client DF that contained the following errors:

20 a. As a Schedule A deduction, Respondent included the full amount of the vehicle
21 registration where only the vehicle licensing fee portion is deductible.

22 b. As a Schedule A deduction, Respondent included a mortgage interest deduction
23 of \$20,583 that included both DF's home and a separate rental property. The amount attributable
24 to the rental property of \$6,354 should have instead been included on Schedule E, which was not
25 property deducted.

26 c. As a Schedule A deduction, Respondent included as charitable contributions a
27 combined figure of cash and non-cash contributions for a total of \$5,648. Respondent failed to
28 report the \$1,000 non-cash portion of the contributions on Form 8283.

1 d. As a Schedule A deduction, Respondent included "other expenses" for
2 investments in the sum of \$1,996, without any documentation or explanation.

3 e. On Form 2106, Respondent included a lump sum amount of \$9,083, without an
4 itemization of the expenses, where documentation from the client itemized the vehicle expenses,
5 meals, entertainment and travel separately.

6 f. On the Form 2106, Respondent reported meal and entertainment expenses as
7 \$3,222 collectively; however, the documentation supported the sum of \$3,222 for meals and
8 \$1,209 for entertainment.

9 g. On the Form 2106, Respondent reported cell phone expenses as \$1,922;
10 supporting information showed expenses of \$1,616.

11 h. The information in Form 2106 for vehicle expenses of \$9,083 could not be
12 reconciled with the actual expense method or standard mileage rate method.

13 i. Respondent failed to report tax exempt interest and private activity bond
14 interest on a Form 1040 where multiple 1099 Forms reported such information.

15 j. Respondent failed to report the Form 1040 state income tax refund of \$244.

16 k. Respondent reported an Educator expense adjustment of \$250 on Form 1040;
17 however the client did not qualify as an eligible educator.

18 l. On the form Schedule D, Respondent overstated losses in two (2) brokerage
19 transactions. The net effect was to give the client a carryover loss of \$9,372, when the carryover
20 loss should have been \$3,143.

21 m. Respondent lists a California Schedule CA 540 interest income adjustment of
22 \$11,400; however, Form CA Schedule K-1 (568) shows no such adjustment.

23 **2008 Tax Return for Client AC**

24 10. On or about March 15, 2009, Respondent prepared a 2008 individual income tax
25 return for client AC that contained the following errors:

26 a. As a Schedule A property tax deduction, Respondent included a deduction of
27 \$4,096; however the Forms 1098 Mortgage Interest Statement supported a deduction of \$8,606.
28

1 b. As a Schedule A charitable contributions deduction, Respondent included
2 contributions of \$386 and \$475 without supporting documentation.

3 c. Respondent failed to include a Form 1040 foreign tax credit where
4 documentation supported a credit of \$15.

5 d. On the Form Schedule D, Respondent reported losses from stock transactions
6 of \$1,981. The documentation showed a long term gain of \$185.

7 e. Respondent incorrectly included a stock transaction loss from Powershares on
8 Schedule E that should have been entered on Form 6781 and carried to Schedule D.

9 f. Respondent included incorrect information in Schedule E that showed a non-
10 passive rental loss from the partnership entity ARC LLC. The entry should instead have been
11 categorized as passive income.

12 **2009 Tax Returns for Clients AC, JP, BF, GB and LL**

13 11. In or about 2010, Respondent prepared 2009 individual income tax returns for
14 clients AC, JP, BF, GB and LL that deviated from the requirement of the Treasury Department
15 Circular No. 230, Regulations Governing Practice before the Internal Revenue Service. The
16 circumstances are as follows:

17 a. Respondent prepared Form 2106 claims for "communication" expenses for
18 clients BF, GB and LL which included the full amount of the cell phone bills, where such
19 deductions should have been limited to business communications.

20 b. Respondent prepared Form 2106 claims for "computer exp/software"
21 expenses for client LL but failed to follow the strict rules for deducting computers and software.

22 c. Respondent prepared Form 2106 claims for "office expense" for client LL
23 that were not supported by documentation showing that it was for business use.

24 d. Respondent prepared Form 2106 claims for "small tools and supplies" for
25 GB which were not supported where GB's profession was documented as a pharmacist.

26 e. Respondent prepared Form 2106 claims for "employee supplies" for
27 client LL that were not supported where LL's profession was documented as a systems analyst.
28

1 f. Respondent prepared Form 2106 claims for "parking fees & tolls" for
2 client GB that did not contain any other travel expenses. Under IRS Publication 463, parking fees
3 and tolls can be deducted only in conjunction with using the Standard Mileage Rate for travel.

4 g. As a Schedule A deduction, Respondent incorrectly included the full
5 amount of the loan origination fees (points) for client AC; however, the documentation showed
6 that the fees were for the refinance of a loan, and AC was not entitled to the full amount of the
7 fees in the 2009 return.

8 h. As a Schedule A deduction, Respondent failed to include a deduction for
9 investments expenses for client AC, where the documentation on Schedule K-1's from
10 Powershares supported a deduction.

11 i. As a Schedule A deduction, Respondent reduced the mortgage interest
12 deduction for client JP by 15%, but failed to maintain any supporting documentation including a
13 Qualified Loan Limit and Deductible Home Mortgage Interest Worksheet.

14 j. As Schedule A non-cash charitable deductions for clients AC, JP, BF, GB
15 and LL, Respondent documented the sums of either \$475 or \$495 for each client, without any
16 support.

17 k. Respondent failed to include a Schedule A tax preparation fee deduction
18 for client BF who had paid Respondent for tax preparation services the prior year.

19 l. Respondent failed to comply with IRS Circular 230 and the AICPA Code
20 of Professional Conduct in performing due diligence and a proper tax interview of client BF,
21 where he documented a Schedule C business loss of \$15,000 based on BF's consulting business;
22 however, it did not appear that BF was in the consulting business during the subject time period.

23 m. Respondent failed to properly document the stock information for client
24 AC on the Schedule D form where Respondent appeared to have transposed the information for
25 the stock basis with the stock sale, thus creating a purported gain from the sale.

26 n. The information prepared for client AC showing a Schedule K-1 loss
27 from ARC LLC included a full deduction for the loss. The loss should instead have been
28 categorized as a passive income subject to Passive Activity Losses. Moreover, Schedule K-1

1 forms from various sources were netted and reported as ordinary income and failed to indicate
2 proper reporting to transfer to Form 6781 and Schedule D.

3 o. Respondent reported losses for non-passive activity for client AC; however,
4 supporting documentation showed the losses as being from passive activity.

5 p. Respondent failed to report Form 1040 tax exempt interest for client AC.

6 q. Respondent failed to report Form 1040 foreign tax credit for client AC.

7 r. Respondent incorrectly reported excess social security withheld credit for client
8 BF where the client submitted two (2) separate W2 forms for BF and BF's spouse; however,
9 Respondent coded the social security information to both the IRS and FTB as if it had belonged to
10 a single taxpayer, creating a false credit.

11 s. Respondent reported estimated tax payments for client JP on Form 1040 as
12 \$14,000; however, documents supported an amount paid of \$13,000.

13 t. Respondent reported income for client JP on California Form 540, based upon a
14 Schedule K-1 from Yountville, LLC, which contained an adjustment to income on California
15 Schedule K-1(568). Respondent did not make this adjustment on the California return.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Violation of Professional Standards)**

18 12. Respondent is subject to discipline pursuant to Code section 5100, subdivision (g), in
19 conjunction with California Code of Regulations, title 16, section 58, in that Respondent willfully
20 violated applicable professional standards and the tax code, by making numerous errors on
21 multiple clients' tax returns even though the information was provided at the time of the
22 preparation of the tax returns. The circumstances of this violation are set forth in Paragraphs 9-11
23 above, which are incorporated by reference as though set forth fully.

24 **PETITION TO REVOKE PROBATION**

25 **PROBATION TERMS AND CONDITIONS**

26 13. Proposed Decision No. AC-2008-21 provides for certain probation terms and
27 conditions, in pertinent part, as follows:

28 a. Stipulated Settlement and Disciplinary Order, AC 2008-21, Item 1 states:

1 **Obey All Laws.** Respondent shall obey all federal, California, other states' and local
2 laws, including those rules relating to the practice of public accountancy in California.

3 **b. Stipulated Settlement and Disciplinary Order, AC 2008-21, Item 9 states:**
4 **Retention of Client Documentation.** During the course of probation, Respondent
5 shall retain all client documentation for deductible items reported on client Schedules A and
6 Forms 2106, including phone messages and memos to Respondent's files that support verbal
7 client information, which shall be open to inspection by the Board or its designee.

8 **c. Stipulated Settlement and Disciplinary Order, AC 2008-21, Item 10 states:**
9 **Retention of Documentation of Contacts with Tax Agencies.** During the course of
10 probation, Respondent shall retain all documentation of contacts with the IRS, the California
11 Franchise Tax Board, and/or, other similar out-of state tax agencies, including telephone
12 messages and memos to Respondent's files that support verbal contacts with the named agencies,
13 regarding client tax return issues for which Respondent renders services, which shall be open to
14 inspection by the Board or its designee.

15 **FIRST CAUSE TO REVOKE PROBATION**

16 (Failure to Obey all Laws)

17 14. Respondent's probation is subject to revocation for failure to comply with Probation
18 Condition 1, Obey All Laws, when he failed to comply with the rules relating to the practice of
19 public accountancy in California as set forth more fully in Paragraphs 9a-i, 10 a-b, and 11a-j
20 above, and incorporated herein by this reference.

21 **SECOND CAUSE TO REVOKE PROBATION**

22 (Failure to Retain Client Documentation)

23 15. Respondent's probation is subject to revocation for failure to comply with Probation
24 Condition 9, Retention of Client Documentation, in that commencing on February 23, 2009, and
25 continuing through the period of probation, Respondent has failed to maintain copies of client
26 records including records for the deductible items on Schedule A and Form(s) 2106 including
27 such documents as are set forth more fully in Paragraphs 9d, 10b, 11c-f, and 11i above, and
28 incorporated herein by this reference.

1 THIRD CAUSE TO REVOKE PROBATION

2 (Failure to Retain Documentation of Contact with Tax Agencies)

3 16. Respondent's probation is subject to revocation for failure to comply with Probation
4 Condition 10, Retention of Documentation of Contacts with Tax Agencies in that, during a
5 November 17, 2009 meeting with Board investigators or anytime thereafter, Respondent failed to
6 maintain and produce an accurate phone log for each client file of his communications with tax
7 agencies, that support verbal contact with said agencies regarding client tax issues. A separate
8 communication log, with sufficient information about the date, time, who was contacted, and the
9 substance of communication, was not kept in each client's file.

10 PRAYER

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
12 and that following the hearing, the California Board of Accountancy issue a decision:

13 1. Revoking the probation that was granted by the California Board of Accountancy in
14 Case No. AC-2008-21 and imposing the disciplinary order that was stayed thereby revoking
15 Certified Public Accountant Certificate Number 38463, issued to Richard Jay Birnbaum;

16 2. Revoking or suspending Certified Public Accountant License No. 38463, issued to
17 Richard Jay Birnbaum;

18 3. Ordering Richard Jay Birnbaum to pay the California Board of Accountancy the
19 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
20 Professions Code section 5107; and

21 4. Taking such other and further action as deemed necessary and proper.

22
23 DATED: 2-21-12

24 Deanne Pearce for
25 PATTI BOWERS
26 Executive Officer
27 California Board of Accountancy
28 Department of Consumer Affairs
State of California
Complainant

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